

## Internal Revenue Service

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:01

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November 15, 2006

### Legend:

Date A =

Date B =

a =

b =

c =

d =

Country A Currency =

Dear :

This letter responds to your September 5, 2006 request that we supplement PLR-120228-06, dated August 10, 2006 (the "Prior Letter Ruling"). Additional information was submitted on October 26, 2006. Capitalized terms not defined in this ruling have the meanings originally assigned to them in the Prior Letter Ruling. The material information provided for consideration is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an

appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

The Prior Letter Ruling addressed certain federal income tax consequences of proposed transactions under § 355 and certain other provisions of the Internal Revenue Code (the "Code"). The Prior Letter Ruling held that the Distribution qualified as tax free under § 355. The Distribution was completed on Date A.

## SUMMARY OF FACTS

Controlled is authorized to issue a shares of common stock, with a par value of \$b and a shares of preferred stock with a par value of \$b. There are currently c shares of Controlled Common Stock outstanding. Controlled has no other outstanding classes of stock. On Date B, Controlled changed its functional currency to Country A Currency and after this change, the par value of the Controlled Common Stock is the only item of financial information reported on Controlled's balance sheet that is reflected in U.S. currency. Accordingly, Controlled wishes to be able to change the denomination of the par value of Controlled Common Stock from U.S. currency to Country A Currency. To effectuate this change in the par value of Controlled Common Stock, Controlled will file an amendment to its Certificate of Incorporation reflecting the change in the par value of Controlled Common Stock and preferred stock from \$b per share to an approximate equivalent amount of Country A Currency (approximately d units of Country A Currency). There will be no other changes to the terms of the Controlled Common Stock and new Controlled Common Stock will not be issued in connection with the change in par value described above.

The Prior Letter Ruling states that "[d]epending on market conditions, Controlled may purchase up to X percent (an amount that is not greater than twenty percent) of its outstanding shares after the Distribution through open market purchases (the "Controlled Repurchases")." Controlled wishes to be able to repurchase its stock through additional methods such as block purchases, accelerated share repurchase transactions ("ASR"), a Modified Dutch Auction tender offer, or some combination thereof.

For instance, in order to facilitate large stock purchases and to enhance the effectiveness of its stock purchasing program, Controlled may purchase its shares from an investment or commercial bank ("Broker/Bank") pursuant to an ASR. In an ASR, Controlled purchases a specified number of its common shares from Broker/Bank and initially pays to Broker/Bank an estimated price per share (the "Initial Price"), which is equal to the average price of Controlled Common Stock on the previous day. Broker/Bank obtains the shares delivered to Controlled by "borrowing" shares of Controlled Common Stock from the stock market. In the subsequent weeks, the

Broker/Bank buys shares on the open market in an amount equal to the number of borrowed shares and returns the shares it borrowed to the initial stock lenders.

Once the purchase program is completed, Controlled and Broker/Bank "true-up" to take into account any difference between the Initial Price when Controlled purchased the shares and the average price Broker/Bank paid for the shares over the subsequent weeks. To help minimize the exposure to market price fluctuations on the "true-up" price, Controlled may enter into an agreement with the Broker/Bank to establish a minimum and maximum price Controlled is willing to pay for its share repurchases. Under such an agreement, the "true-up" cannot exceed certain parameters.

Controlled may also purchase shares through block purchases allowed under Rule 10b-18 of the Securities Exchange Act of 1934. Such purchases may be privately negotiated purchases, either directly or through Controlled's broker. While the identity of the seller may be known to Controlled or its broker, all such sales will occur in compliance with the provisions of Rule 10b-18.

Controlled presently conducts Business 2, which was relied upon in the Prior Letter Ruling to satisfy the active trade or business requirement of section 355(b), through LLC 1, an entity disregarded for federal income tax purposes. For international tax planning reasons, Controlled currently anticipates that it will incorporate LLC 1 by merging LLC 1 into a newly formed corporation which would be wholly owned by Controlled (or a wholly owned subsidiary of Controlled) or by some other appropriate means (the "LLC 1 Conversion").

## REPRESENTATIONS

Distributing reaffirms all of the representations and statements made in the Prior Letter Ruling, except that the following representations are added, as of the date of the Distribution, to read in their entirety as follows:

- (a) Controlled will not make any block purchases of shares of Controlled Common Stock from any Institutional Investor or any shareholder who owns five percent or more of the stock in, or securities of, Controlled at the time of the purchase.
- (b) Assuming that the LLC 1 Conversion occurs, Distributing and Controlled will treat all members of their respective separate affiliated groups (as defined in § 355(b)(3)(B)) as one corporation in determining whether the requirements of § 355(b)(2)(A) regarding the active conduct of a trade or business are met.
- (c) Assuming that the LLC 1 Conversion occurs, following the transaction, each of Distributing and Controlled (through LLC 1 or its successor) will continue the active conduct of its business, independently and with its separate employees, except for services to be provided by Distributing

to Controlled, or vice versa, for a transitional period following the Distribution pursuant to the Separation Agreements.

## RULINGS

Based solely on the information and representations set forth above and in the Prior Letter Ruling, we rule that:

1. No gain or loss will be recognized by Controlled or its shareholders as a result of the change in the par value of Controlled Common Stock from \$b to approximately d units of Country A Currency.
2. Neither (A) the change in the par value of Controlled Common Stock from \$b to approximately d units of Country A Currency, (B) the modifications to the description of the Controlled Repurchases as set forth above, nor (C) the LLC 1 Conversion will have any adverse effect on the rulings contained in the Prior Letter Ruling, and all such rulings will remain in full force and effect.

## CAVEATS

We express no opinion about the tax treatment of the proposed transactions under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the proposed transactions that are not specifically covered by the above rulings and the rulings contained in the Prior Letter Ruling.

## PROCEDURAL STATEMENTS

This supplement is directed only to the taxpayers who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this supplement must be attached to any income tax return to which it is relevant. Alternatively, instead of attaching a copy of this supplement to a return, a taxpayer filing a return electronically may attach a statement to the return that provides the date and control number of the supplement.

In accordance with the power of attorney on file in this office, a copy of this supplement is being sent to your authorized representatives.

Sincerely,

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Michael J. Wilder  
Senior Technician Reviewer, Branch 1  
Office of Associate Chief Counsel (Corporate)